



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Bascom Giles
Commissioner, General Land Office
Austin, Texas

Dear Mr. Giles:

Opinion No. 0-5265
Re: Liability of Lessee for
\$2.00 per acre annual
payment under State lease
No. 6814.

You have requested our opinion as to whether or not the lessee under State Lease No. 6814, covering 494 acres of the bed of Cow Bayou in Orange County, is obligated to pay the State the \$2.00 per acre annual payments provided for in Article 5344, R. C. S. 1925.

In connection with this request you have furnished affidavits of various parties reciting, in substance, that the lessees of lease No. 6814, both prior and subsequent to the enactment of Article 5344, drilled at least five wells and expended as much as \$100,000.00 in developing said lease.

There is now pending in the Court of Civil Appeals at Austin litigation in which the State is asserting that the Legislature, after issuance of a permit or lease, cannot constitutionally decrease, release or extinguish the liability of a lessee or permittee of University land for the \$2.00 per acre annual payments provided for by statutes in force at the time a permit is issued. The District Court has refused to follow our contention and the case should be decided by the Court of Civil Appeals in the near future. If the Appellate Courts should overrule our contentions with respect to the statutes dealing with University leases, it would necessarily follow that Article 5344, insofar as it is applicable to the facts presented in your opinion request, operates as a valid release of the requirement for payment of the \$2.00 per acre annual payments provided for in original lease No. 6814.

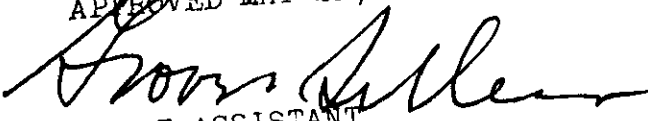
Hon. Bascom Giles, Page 2

In view of the pending litigation we do not believe it proper or advisable for us to render an opinion at this time. As soon as the above litigation has been decided we will furnish you with an opinion which will of course conform to the decision of the Appellate Court.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED MAY 21, 1941


FIRST ASSISTANT
ATTORNEY GENERAL

By


Robert E. Kepke
Assistant

REK:BT